MARITIME EXCHANGE
for the Delaware River and Bay
Leading the Way to Port Progress

February 23, 2022

Alice A. Previte, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection
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PO Box 402
Trenton, NJ 08625-0402

Re: DEP Docket No. 08-21-11
N.J.A.C. 7:27A-3.10

Dear Ms. Previte:

On behalf of those of the nearly 300 Maritime Exchange members who conduct business in New Jersey, this letter is to express concerns about the above-referenced proposed rule. As you may be aware, the Maritime Exchange for the Delaware River and Bay is a nonprofit association dedicated to promoting a commercially vibrant, safe, secure, and environmentally healthy maritime industry in the tristate region.

Please be aware that the Maritime Exchange and its members share New Jersey's goals of cleaner air. However, it is incumbent on policymakers at all levels not only to ensure that rules and requirements demonstrate clear benefits in relation to their costs but that the mandates are reasonably achieved and cause no unintended outcomes.

To that end, please allow us to delineate concerns expressed by our members:

- **It may be too early to mandate complete transition of all cargo-handling equipment used at port terminals or intermodal yards**. Capital acquisitions of this nature are expected to yield 15-20 year lifetimes. Clean-engine technology is advancing rapidly; if entire fleets are converted at this time, port owners/operators will be unable to take advantage of newer, cleaner equipment that will soon become available.
- **Cost estimates do not reflect current market conditions.** Simply stated, costs are skyrocketing, with some equipment listing at nearly $700,000 each—well beyond the cap estimated in the proposed rule. Accordingly, NJDEP has manifestly underestimated the effect of its proposal on the regulated public.
- **The implementation period is unworkable.** Prudent management practices demand that investments in new assets are phased in over time. For most if not all business owners—private and public—modernizing entire fleets at once is cost prohibitive. Forcing port owners/operators to undertake such activity threatens the very economic viability of these entities. Further, consumer demand and supply chain backups have resulted in acquisition lead times that far exceed the implementation period envisioned in the proposed rule.
- **A one-size-fits-all approach is neither necessary nor appropriate**. NJDEP should consider the differences in operations at various terminals. Specifically, this rule is based on a California model that reflects activity bearing no resemblance to operations at ports in Southern New Jersey. Indeed, the proposed rule fails to take into account the specialized handling that breakbulk (e.g.,

steel and other non-containerized commodities) and project cargos (such as wind turbines, heavy lift equipment) cargoes demand. The rule does not contemplate the diverse array of equipment necessary to move these goods.

Finally, we also encourage NJDEP to consider one other potential consequence that will accrue should the rule be finalized as written: wholesale loss of business to nearby competing ports. If costs of doing business in New Jersey increase due to the requirement for such substantial capital investment, those port customers will take their cargo elsewhere. Unlike in California, which all but has a monopoly on certain trade lanes and has far fewer neighboring ports, cargos currently handled in South Jersey can very easily move to ports across the Delaware River in Pennsylvania and Delaware. For that matter, neither will facilities in North Jersey be immune; ports in Baltimore, Norfolk, Charleston, and Savannah will be only too happy to take this business away from New Jersey.

Suggested Remedies

First, NJDEP should increase the exemption for equipment used from 200 to 1,000 hours. Given the way certain equipment is used, this would go a long way toward easing the burden without dramatically diminishing the benefits.

The rule should include a longer phase-in period. This will allow owners/operators to begin the process in the short term while providing an opportunity to develop reasonable expenditure plans, take advantage of emergent technologies in the intermediate term, and overcome persistent delays associated with overheated consumer demand and supply chain disruptions.

Given the disparate nature of port operations, we suggest NJDEP consider an approach similar to that used by the federal government for maritime security. Under the Maritime Transportation Security Act and its implementing regulations, each regulated terminal facility develops a security plan that reflects its own specific operations (for example, type of cargo handled). Plans are submitted to the Coast Guard for approval prior to implementation. NJDEP could follow such a format for this rulemaking.

Most importantly, if NJDEP feels compelled to mandate the requirements proposed in the rule at this time, the state must provide financial assistance/costs offsets. Cleaner air is a shared responsibility, and the state must be willing to dedicate some of its resources to helping the business community meet New Jersey's goals.

Thank you for the opportunity to express our concerns. The Maritime Exchange and its members stand ready to assist NJDEP in any way necessary to facilitate a mutually acceptable transition to a zero-emissions environment.

Sincerely,

Lisa B Himber

Lisa B. Himber
President